

AUSTIN R. GIBBONS, ESQ. SBN 034619
 SEAN C. CONLEY, ESQ. SBN 130814
 GIBBONS & CONLEY
 1333 North California Boulevard, Suite 110
 Walnut Creek, CA 94596
 Telephone: (925) 932-3600 Fax: (925) 932-1623

Attorneys for Defendant City of Pittsburg

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

| | | |
|--------------------|---|---|
| LIEM HIEU LE, |) | CASE NO. 3:08-cv-00727-JL |
| |) | |
| Plaintiff, |) | REPLY IN SUPPORT OF MOTION |
| |) | TO DISMISS OR FOR MORE |
| v. |) | DEFINITE STATEMENT |
| |) | |
| CITY OF PITTSBURG, |) | Date: April 23, 2008 |
| |) | Time: 9:30 a.m. |
| Defendant. |) | Location: Courtroom F, 15 th Floor |
| |) | Judge: Magistrate Judge Larson |

Plaintiff's "reply" does not dispute that the complaint fails to allege a legitimate cause of action, nor does it dispute that the complaint fails to give fair notice of the asserted claims. Based upon the fact that plaintiff does not contest the basis for the motion, the motion should be granted.

Plaintiff apparently means to content that there are facts which, if properly alleged, would constitute a cause of action. However, plaintiff does not submit a proposed amended complaint, and it is therefore difficult to determine whether plaintiff could, in fact, properly allege any legitimate cause of action. The bullet-pointed enumeration of alleged events in the "reply" do not amount to a cause of

1 action as stated. Nowhere are proper *Monell* allegations identified. Similarly,
 2 plaintiff does not identify a proper Federal statutory cause of action, despite now
 3 indicating jurisdiction based upon 28 U.S.C. section 1343, instead of 1332 as
 4 alleged in the complaint. Furthermore, there is no allegation of compliance with the
 5 Government Claims Act, which is required for state law causes of action.

6 Even treating the enumeration of alleged events in the "reply" as proposed
 7 allegations of a complaint, they still fail to provide the fair notice of the claims
 8 asserted and the grounds upon which they rest. Nor does plaintiff offer a definite
 9 statement of special items of damages, despite acknowledging that F.R.C.P. Rule
 10 9(g) requires such a specific statement.

11 Given that plaintiff does not contest that the allegations of the complaint are
 12 inadequate, nor does plaintiff propose a legitimate amendment to the complaint,
 13 defendant respectfully requests this Court to grant this motion and dismiss the
 14 complaint.

15 Dated: 4/8/08

GIBBONS & CONLEY

16 By: 

AUSTIN R. GIBBONS

SEAN C. CONLEY

Attorneys for Defendant City of Pittsburgh

1 **LE v. CITY OF PITTSBURG**

2 **U.S. District Court, Northern District of California Case No. CV 08-0727-JL**

3 **PROOF OF SERVICE**

4 I am employed in the County of Contra Costa, State of California. I am over the age of 18
5 years, and not a party to the within action. My business address is 1333 North California Boulevard,
6 Suite 110, Walnut Creek, California, 94596. On the date set forth below, I caused to be served a
7 true copy of the foregoing **REPLY IN SUPPORT OF MOTION TO DISMISS OR FOR**
8 **MORE DEFINITE STATEMENT** on the following person(s) in this action addressed as follows:

9 Liem Hieu Le
713 Caskey Street
Bay Point, CA 94565
10 Tel: (925) 709-1063

Plaintiff pro se

11 ☒ **BY MAIL**. I am readily familiar with my firm's practice for collection and processing of
12 correspondence for mailing with the United States Postal Service, to wit, that correspondence
13 will be deposited with the U.S. Postal Service this same day in the ordinary course of
14 business. I sealed said envelope and placed it for collection and mailing, following ordinary
15 business practices.

16 ☒ **FEDERAL**. I declare that I am employed in the office of a member of the bar of this Court
17 at whose direction the service was made.

18 ☒ **STATE**. I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct.

20 Executed on April 8, 2008

21 
22 **KARIN JOHNSON-BUTLER**